FILE COPY

Office - Supreme Court, U.
FILED
FEB 4 1947
CHARLES ELMORE CROPL
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 985

CHARLES J. CULLIGAN,

Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

ROBERT C. HANDWERK,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 985

CHARLES J. CULLIGAN,

Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO REVIEW JUDGMENT OF THE COURT OF CLAIMS

The petitioner respectfully shows to the Court, as follows:

SUMMARY AND STATEMENT OF MATTER INVOLVED

1. This matter involves a suit filed by petitioner in the court below to recover judgment in the sum of $17,397, with interest, representing salary due him as a former letter carrier on duty in Atlantic City, N. J., it being alleged that he was removed from his position as such without just cause and a hearing under the statute hereinafter cited, and that said statute has been construed to require a hearing thereunder. Petitioner was never given an opportunity to fully present facts showing his innocence of the

charges against him, but was arbitrarily dismissed by the Post Office Department.

STATUTE INVOLVED

The statute involved is Sec. 6 of the Act of August 24, 1912; 37 Stat. 555, the relevant part of which reads as follows:

> "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: * * *"

QUESTIONS PRESENTED

1. Can a regular letter carrier legally be dismissed under said statute without a hearing within the meaning of the 5th Amendment of the Constitution of the United States, stating in part that no person shall be deprived of life, liberty, or property, without due process of law?

2. Can said Amendment be so construed as to leave Congress free to make any process, "due process of law," by its mere will. See *Murray* v. *Hoboken Land, etc. Co.*, 18 How. 277.

3. Wasn't petitioner's contract with the respondent canceled and terminated by depriving him of property without due process of law?

4. Isn't said statute conflicting in that while it provides that no hearing shall be required, it later mentions a notice of hearing? The statute should be construed liberally in favor of the accused person with right accorded for a personal hearing on the merits.

5. Do the terms of said statute fulfill the said requirements of Amendment 5 to the Constitution as to due process of law, or is said statute unconstitutional, Congress having violated the limitations placed upon it by said provisions of the Fifth Amendment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The writ should issue for the following reasons:

1. The lower court erred in construing the statute to the effect that a hearing was not required before removal of petitioner. The statute was construed to require a hearing in the case of *United States, ex rel., Newcomer* v. *Postmaster of City of Buffalo,* 221 Fed. Rep. 687.

2. The court erred in holding the statute constitutional and that it did not violate the 5th Amendment to the Constitution of the United States, the petitioner alleging in his petition that he was deprived of property without due process of law. The judicial department of the Government is governed in the exercise of its functions by the rule of due process of law. See *Hovey* v. *Elliott,* 167 U. S. 409.

3. The court erred in dismissing the petition and denying petitioner the right to trial and judgment on the merits. In doing so he was denied due process of law.

4. In *United States* v. *Elchibegoff*, No. 442, October Term, 1946, this Court allowed a writ to issue on petition for certiorari. In that case, the record shows, Elchibegoff had asked for a hearing under the same statute. He was allowed to recover in the Court of Claims. Petitioner is advised that the case was recently dismissed by this Court at the request of the United States, thus again leaving the questions, as here involved, unsettled. It is, therefore, respectfully requested that the writ should issue in the case at bar in order to finally settle and determine the matters heretofore stated.

Respectfully submitted,

ROBERT C. HANDWERK,
Southern Bldg.,
Washington, D. C.,
Attorney for Petitioner.

(9115)